

Exhibit USAbt-F

Springfield, IL

Page 1

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

-----X

IN RE: PHARMACEUTICAL INDUSTRY)

AVERAGE WHOLESALE PRICE LITIGATION) MDL No. 1456

-----) Civil Action

THIS DOCUMENT RELATES TO:) No. 01-12257-PBS

United States of America, ex. rel.) Hon. Patti Saris

Ven-a-Care of the Florida Keys,) Magistrate Judge

Inc., v. Abbott Laboratories, Inc.,)

Civil Action No. 06-11337-PBS; and)

United States of America, ex. rel.) VIDEOTAPED

Ven-a-Care of the Florida Keys,) DEPOSITION OF

Inc., v. Dey, Inc., et. al., Civil) THE ILLINOIS

Action No. 05-11084-PBS; and United) DEPARTMENT OF

States of America, ex. rel.) HEALTHCARE AND

Ven-a-Care of the Florida Keys,) FAMILY SERVICES

Inc., v. Boehringer Ingelheim) by JAMES PARKER

Corp. et. al., Civil Action)

No. 07-10248-PBS.) NOVEMBER 18, 2008

-----X

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

fa5c159e-ee09-4b62-8e3c-8f6f6a80c7cd

Springfield, IL

Page 32

1 at 9:42 a.m.

2 BY MS. OBEREMBT:

3 Q. Mr. Parker, could you review Exhibit 2?

4 A. Okay.

5 Q. Does this appear to be the federal
6 regulation regarding payment for prescription
7 drugs in state Medicaid programs?

8 A. Yes, it does.

9 Q. If I could direct your attention to
10 Section 447.331(b) entitled "Other drugs." If
11 you could take a minute to read that paragraph?

12 A. (Witness reviewing document.)

13 Okay.

14 Q. Do you see where it says that it refers
15 to "...payment levels that the Agency has
16 determined by applying the lower of the -- (1)
17 Estimated acquisition cost plus reasonable
18 expense and fees established by the Agency; or
19 (2) Providers' usual and customary charges to the
20 general public"?

21 A. Yes.

22 Q. Has HFS established a reimbursement

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

fa5c159e-ee09-4b62-8e3c-8f6f6a80c7cd

Springfield, IL

Page 33

1 methodology that applies these elements?

2 A. Yes.

3 Q. What about usual and customary charges
4 to the general public, how does the State define
5 that?

6 A. It's defined as the price that a
7 pharmacy would charge to a cash-paying customer.

8 Q. I'd like you to also look at Section
9 447.301 "Definitions."

10 A. (Witness so doing).

11 Q. Which I'm not sure that's on here,
12 actually.

13 MR. LIBMAN: Yes.

14 THE WITNESS: Yes.

15 MS. OBEREMBT: Oh, right above, sure.
16 If you could take a look at that where the second
17 sentence says, "Estimated acquisition cost"?

18 A. Okay.

19 Q. Are you familiar with that definition?

20 A. Yes, I am.

21 Q. Has Illinois tried to determine
22 estimated acquisition cost in accordance with

Springfield, IL

Page 34

1 that definition?

2 A. Yes, we have.

3 Q. Does the State have a formula for
4 reimbursing for the drug ingredient portion of
5 pharmacy claims?

6 A. Yes, we do.

7 Q. And where is the State's formula
8 typically written down?

9 A. It is both in the rules that we publish
10 under the Illinois Administrative Procedure Act
11 and in our State Plan on file with Federal CMS.

12 Q. When you use the term "CMS," to what
13 are you referring?

14 A. The Centers for Medicaid and Medicare
15 Services or whichever one they put first.

16 Q. And is that part of the Department of
17 Health and Human Services?

18 A. Yes, it is.

19 MS. OBEREMBT: I'd like the court
20 reporter to mark as Exhibit 3 a summary exhibit.

21 (Plaintiff's Exhibit Parker 003
22 was marked for ID)

Springfield, IL

Page 61

1 you issue a final version of a rule?

2 A. Our rulemaking process internally to
3 the Agency does circulate the rules to all of the
4 divisions, and the rules would be commented upon
5 by the Division of Finance and the Office of
6 General Counsel and at times the Office of
7 Information Systems, which is the computer people
8 that have to program every policy change into the
9 computers.

10 Q. Turning back to Exhibit 3, has the
11 State of Illinois historically determined its
12 Estimated Acquisition Costs separate from its
13 determination of a dispensing fee?

14 A. Yes, I mean there was a period when
15 there was a correlation between a dispensing fee
16 on an individual product and acquisition cost,
17 but the process of determining each is separate.

18 Q. Has the State of Illinois ever had a
19 practice or a policy of paying increased
20 ingredient cost in order to make up for some type
21 of inadequate dispensing fee?

22 A. No.

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

fa5c159e-ee09-4b62-8e3c-8f6f6a80c7cd

Springfield, IL

Page 165

1 assumption that Walgreen's is not selling drugs
2 at a loss.

3 Q. And one of the reasons they may not be
4 setting -- selling at a loss, if their dispensing
5 fees are estimated to be \$11 by one study, is
6 through their reimbursement through ingredient
7 cost, correct?

8 MR. LIBMAN: Objection to form.

9 THE WITNESS: That's a theoretical
10 possibility.

11 BY MR. REALE:

12 Q. And what other explanations would there
13 be?

14 A. That the study who determined it cost
15 \$11 to dispense a prescription was faulty.

16 Q. But why -- do you believe that it's
17 faulty?

18 A. I do. I don't believe that their costs
19 are that high or they wouldn't sell drugs at a
20 much lower cost.

21 Q. So it's more out of a matter of
22 principle? You don't have specific evidence that

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

fa5c159e-ee09-4b62-8e3c-8f6f6a80c7cd

Springfield, IL

Page 166

1 shows you what it really costs a pharmacy in
2 Illinois to dispense drugs?

3 A. I have no data that establishes a
4 different dispensing cost.

5 Q. And when you set the rates for
6 dispensing fees in Illinois, you look to
7 primarily what other states are using as a
8 dispensing fee rate?

9 MS. OBEREMBT: Objection.

10 MR. LIBMAN: Objection. Objection to
11 form.

12 THE WITNESS: That's one of the sources
13 of information we look to, yes.

14 BY MR. REALE:

15 Q. And the other source you would look to
16 would be third-party payers?

17 A. Third-party payers, yes.

18 (Exhibit Roxane IL 004 was marked
19 for ID)

20 BY MR. REALE:

21 Q. Mr. Parker, you've just been handed a
22 document which has been marked Roxane Illinois

Springfield, IL

Page 341

1 BY MR. BERLIN:

2 Q. And you mentioned earlier the Grant-
3 Thornton study. You're aware of that study,
4 right?

5 A. Yes.

6 Q. And you said that it found that it
7 estimated the costs of dispensing for Illinois
8 pharmacies was around \$11? Is that what you
9 testified?

10 A. I testified that that was my
11 recollection.

12 Q. So what do you account for the
13 difference between that and the actual dispensing
14 fee that Illinois currently has?

15 MR. LIBMAN: Objection, asked and
16 answered.

17 You may answer it again.

18 THE WITNESS: As I discussed this
19 morning, the fact that not only the chain drug
20 stores, but all drug stores accept lower
21 dispensing fees than \$11 and lower dispensing
22 fees than our dispensing fees and quite clearly

Springfield, IL

Page 342

1 make profits. As anybody that peruses the
2 business pages of the Chicago Tribune, at least,
3 would see that Walgreen's is an extremely
4 profitable company, and it has continually
5 reported that the sale of prescription drugs is
6 what drives their profits. And so if they're not
7 selling drugs at a loss by taking lower rates, I
8 do not believe that their true cost of dispensing
9 a prescription is \$11.

10 BY MR. BERLIN:

11 Q. Any other basis you have for believing
12 that their true costs of dispensing is not
13 actually \$11?

14 A. No.

15 Q. Other than that? I'm sorry. Other
16 than that?

17 A. That is correct.

18 Q. And that's in fact one of the things
19 that the Department looked at was what was --
20 what were other third-party payers paying as
21 their dispensing fee, right?

22 A. Yes.

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

fa5c159e-ee09-4b62-8e3c-8f6f6a80c7cd